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NO. 82-1031

In the Supreme Court of the United States

OCTOBER TERM, 1982

JEFFERSON PARISH HOSPITAL DISTRICT NO. 2 and EAST JEFFERSON HOSPITAL BOARD,

PETITIONERS

V.

DR. EDWIN G. HYDE,

RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether a tying arrangement that restrains competition among anesthesiologists is immune from the rule of per se illegality under the Sherman Act solely because the services involved are rendered in a hospital?

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STATEMENT OF THE CASE

1. *Course of proceedings below.*

This action was brought by the respondent, Dr. Edwin G. Hyde ("Dr. Hyde") for declaratory and injunctive relief concerning his exclusion from the medical staff at East Jefferson General Hospital ("the Hospital"), located in Jefferson Parish, Louisiana. Dr. Hyde alleged and the petitioners admitted that he was denied admission to the medical staff solely because the Hospital was party to an "exclusive contract" with a group of anesthesiologists named Roux & Associates. Doctor Hyde asked the district

court to declare that the actions of the petitioners violated several constitutional and statutory provisions, including Section 1 of the Sherman Act. Dr. Hyde contended that the exclusive contract between the Hospital and Roux & Associates violated the Sherman Act's Rule of Reason, and also constituted a per se illegal tying arrangement in that users of the Hospital's surgical facilities (the tying product) also were compelled to purchase anesthesia services from Roux & Associates.

Following a trial on the merits, the district court entered Findings of Fact and Conclusions of Law denying all of Dr. Hyde's claims. *Hyde v. Jefferson Parish Hospital District No. 2,* 513 F.Supp. 532 (E.D. La. 1981). Although the district court found that exclusive contract did create a tying arrangement, it held that "the per se rules used in antitrust cases governing regular commercial activities should not be made automatically applicable to cases involving professional activities." *Id.* at 542. The district court upheld the tying arrangement under a Rule of Reason analysis.

The decision of the district court was reversed by the United States Court of Appeals for the Fifth Circuit. *Hyde v. Jefferson Parish Hospital District 2.,* 686 F.2d 286 (5th Cir. 1982). Relying upon this Court's decision in *Arizona v. Maricopa County Medical Society,* __ U.S. __, 102 S.Ct. 2466 (1982), the court of appeals rejected the petitioners' arguments that a lack of "antitrust experience in the health care industry" and "the professional nature of the services" involved precluded application of the normal rule of per se illegality. *Id.* at 293. The court concluded that the tying arrangement created by the exclusive contract was illegal under the per se rule of *Northern Pacific Ry. Co. v. United States,* 356 U.S. 1, 78 S.Ct. 514 (1958) and held that

Dr. Hyde was entitled to the injunctive relief he sought. *Id.* at 294.

2. *Factual Background.*

The Hospital is owned and operated by the petitioner, Jefferson Parish Hospital District No. 2 ("the District"), which was created pursuant to Louisiana law by Jefferson Parish, Louisiana as a political subdivision of the state. The geographic boundaries of the District encompass only that part of Jefferson Parish located on the East Bank of the Mississippi River. Under state law, the only purposes of the District are to own and operate hospitals within its geographic boundaries and to provide hospital and other health services to residents of the District. La. R.S. 46:1052.

The Hospital is the only public hospital within the District and approximately 70 percent of the patients admitted to the Hospital are residents of the District. Approximately 30 per cent of all hospital admissions of District residents are to the Hospital. 513 F.Supp. at 539.

The petitioner, East Jefferson Hospital Board ("the Board"), was appointed by Jefferson Parish pursuant to state law to govern the operation of the District. One of the Board's statutory duties is to make appointments to the Hospital's medical staff "upon the recommendations of the physicians who are authorized to practice within the hospital." La. R.S. 46:1058. Pursuant to state law, the Hospital's medical staff is organized as an entity separate and apart from the Hospital itself. *Id.* The medical staff operates under its own set of by-laws and elects its own officers and committees.

All applications for appointment to the medical staff are directed initially to the medical staff office, which verifies the information furnished by the applicant. The medical staff credentials committee then reviews the applicant's qualifications and submits a recommendation to the medical staff executive committee. The executive committee also reviews the application and submits its recommendation to the Board for approval.

Dr. Hyde applied for medical staff appointment in July, 1977. The medical staff credentials committee reviewed the application in accordance with the medical staff by-laws, and it recommended Dr. Hyde's appointment. The medical staff executive committee also reviewed the application and submitted a recommendation to the Board that Dr. Hyde be appointed.

Despite these favorable recommendations, the Board voted in October, 1977 to deny Dr. Hyde admission to the medical staff. Dr. Hyde was notified of the Board's decision by letter from the Hospital's executive director stating that the application had been denied "in view of the exclusive nature of the contract between the Hospital and Roux & Associates and due to the fact that we have no openings in the Department of Anesthesia." The executive director explained at trial that his statement that there were "no openings in the Department of Anesthesia" meant that Roux & Associates, the anesthesia group that had an exclusive contract with the Hospital, did not intend to employ Dr. Hyde. 513 F.Supp. 537.

The exclusive contract cited as the basis for the Board's denial of Dr. Hyde's application was the second of two contracts between the Hospital and Roux & Associates. The first contract, executed in February, 1971,

explicitly granted to Roux & Associates the exclusive right to provide anesthesiology services at the Hospital. However, when a second contract was executed in January, 1976, the exclusivity provision was deleted at the request of the group's president, Dr. Kermit Roux. At trial, Dr. Roux explained the reason for his request:

> Q. The Judge asked you if in fact when the 1976 contract was negotiated and executed, you asked that the language calling for the exclusion of the other anesthesiologists be deleted from the contract.
>
> A. Yes, sir.
>
> Q. So that it would no longer be a part of the contract?
>
> A. Yes, sir. The reason we did that, there were a number of reasons. There was this other group that had requested to come practice there and led us to believe that some physicians preferred them to give their anesthetics. And if that were true, then I think they should be allowed to practice.
>
> The other reason is pretty much what you have alluded to, I didn't want to be there on the basis of hiding behind a contract. If I couldn't provide the service as best I could, then someone else ought to have a shot at it.
>
> And I have been told by people a number of times that, you're hiding behind the contract because it gives you exclusive privileges "exclusive privileges" and doesn't let anyone else come. And I don't believe that that's the way medicine should be practiced. It should be practiced on the basis of the person whom the physician or the patient feels can do the best job, should be their physician.

> So, we finally got them to delete that part of the contract.

686 F.2d at 288 n. 2. Although Dr. Roux obtained a change in the language of the contract because he felt the practice of medicine should be competitive rather than exclusive, the petitioners continued to interpret another provision of the contract as granting to Roux & Associates the exclusive right to provide anesthesia services at the Hospital. 513 F.Supp. 536.

The 1976 contract provided for a sharing of fees between the Hospital and Roux & Associates. The fees, however, were determined by Roux & Associates. The financial arrangement was described by the district court as follows:

> Ellis [the Hospital's executive director] testified that the hospital charges patients one fee for the professional services rendered by the anesthesiologist and for the anesthesia services provided by the hospital. The hospital pays the salaries of the nurses and purchases the equipment and supplies for the anesthesia department. A large number of the supplies are purchased from out of state. It also provides housekeeping, record keeping and maintenance services to the department.
>
> The anesthesiologist determines the fee for the anesthesia serivce provided dependent upon the complexity and length of the operation performed. The hospital deducts 8% for bad debts, charity and other write offs from the gross receipts of the department and 50% of the remainder is paid to Roux and Associates for its professional services.

513 F.Supp. at 536.

The petitioners do not seriously dispute that the exclusive contract directly restrains competition among anesthesiologists by precluding any patient or surgeon using the Hospital's operating room facilities from selecting any anesthesiologist other than a member of Roux & Associates. In addition, there was undisputed evidence at trial that the exclusive contract also restrains competition among anesthesiologists indirectly by limiting the total number of anesthesiologists available to serve patients in the market. The court of appeals described the anticompetitive effects of the contract as follows:

> In the course of presenting his case that the exclusive contract between the hospital and Roux and Associates violates the Sherman Anti-Trust Act, Dr. Hyde pointed out a number of "anti-competitive" effects that flow from the agreement. Basic to a discussion of these effects is an understanding of the manner in which the specialty of anesthesiology is practiced. Although the specialty of anesthesiology is indeed a very important and demanding one, the anesthesiologist is only involved in the medical decision-making process after the initial decision between the patient and surgeon that surgery is the indicated course of treatment. It is not surprising, therefore, that an anesthesiologist is normally selected by the surgeon, rather than the patient, based on familiarity gained through a working relationship. Obviously, the surgeons who practice at East Jefferson Hospital do not gain familiarity with any anesthesiologists other than Roux and Associates. Dr. Hyde argues that his is an especially egregious case because he has a more personal relationship with a great number of his patients than many anesthesiologists. This is because he specializes in obstetric anesthesiology

and, more particularly, the administration of epidural anesthetics. The exclusive contract, therefore, prohibits patients as well as surgeons from selecting him. Another twist which is important to an understanding of the specialty is that more than in any other medical specialty, anesthesiologists have been confronted with the growth of a paraprofessional counterpart—the anesthetist. Herein lies the actual basis for the hospital's actions in this case. While it is true that the tying of anesthesia services to operating rooms in the instant case did not lead to a higher charge for anesthesia services, it accomplished just as dramatic an effect by increasing the hospital's profit. The hospital realizes a substantial profit from its practice of supplementing a small contract group of anesthesiologists with a much larger group of lower priced anesthetists. Furthermore, this practice lacks candor; the patient is not informed that he will be billed for the services of an anesthesiologist who may have had very little contact with his case.

The exclusive contract spawns a number of anticompetitive effects. First, the tie prevents anesthesiologists from entering that part of the anesthesia services market which the hospital controls. This prohibition of competition not only serves indirectly to artificially limit the number of anesthesiologists in the area, but, more importantly, it reduces the incentive for improving or initiating techniques or procedures. Quality if lowered by this restraint while at the same time the hospital's profit, as demonstrated above, is raised. In the instant case, there was also testimony that the profit motive caused the hospital to hire nurse anesthetists in place of needed anesthesiologists, a practice which dilutes the professional coverage available. Secondly, the tie eliminates the surgeon or patient's choice of

> anesthesiologist at this hospital. Since one goal of antitrust law is to allow the consumer to make buying decisions without being subject to economic coercion, this anticompetitive effect is significant in a market where location tends to govern the choice of hospital.

686 F.2d at 291-92 (footnotes omitted).

ARGUMENT

A. The Decision Of The Court Of Appeals Is Supported By Prior Decisions Of This Court.

On several occasions over the past eight years this Court has declined to exempt restraints on competition among professionals from the normal rules (including the per se rule) governing Sherman Act illegality. In seeking review in this case, the petitioners implicitly ask the Court to reconsider a number of its prior decisions that support the decision of the court of appeals, including *Goldfarb v. Virginia State Bar*, 421 U.S. 773, 95 S.Ct. 2004 (1975); *National Society of Professional Engineers v. United States*, 435 U.S. 679, 98 S.Ct. 1355 (1978); and *Arizona v. Maricopa County Medical Society*, __ U.S. __, 102 S.Ct. 2466 (1982). Unless the Court is inclined to reconsider these decisions, there is no reason to grant review in this case.

In *Goldfarb v. Virginia State Bar, supra*, the Court held that a bar association's minimum fee schedule constituted unlawful price fixing under the Sherman Act. In so holding, the Court rejected the argument that the "learned professions" are exempt from the Sherman Act prohibition. However, in a footnote, the Court suggested that the public service aspect of a profession might be rele-

vant to a Sherman Act analysis. 421 U.S. at 788, 95 S.Ct. at 2013 n. 17. Thus, *Goldfarb* apparently left open the question whether the professions, although subject to the Sherman Act, might be treated more leniently than other commercial enterprises.[1]

The door left open by *Goldfarb* was shut by the Court's decisions in *National Society of Professional Engineers v. United States, supra,* and *Arizona v. Maricopa County Medical Society, supra.* In both cases, the Court rejected arguments that restraints on professional competition should be given special consideration under the Sherman Act. In both cases, the Court applied the antitrust rules applicable to all commercial enterprises. The petitioners now complain because the court of appeals did the same in this case.

In the *Professional Engineers* case, the Court held invalid under the Sherman Act a trade association's ban on competitive bidding among professional engineers. In so holding, the Court summarily rejected the argument that the bidding ban was justified because it "ultimately inures to the public benefit by preventing the production of inferior work and by insuring ethical behavior." 435 U.S. at 693-94, 98 S.Ct. at 1366. The Court held that, *even under the Rule of Reason,* a restraint on competition can be upheld only on one ground: that the restraint in fact *promotes* competition. The Court described the standard as follows:

> The test prescribed in *Standard Oil* is whether the challenged contracts or acts "were unrea-

[1] The district court in fact relied upon *Goldfarb's* footnote 17 as the basis for its conclusion that the exclusive contract should not be judged under a per se rule. 513 F.Supp. at 543.

> sonably restrictive of competitive conditions." Unreasonableness under that test could be based either (1) on the nature or character of the contracts, or (2) on surrounding circumstances giving rise to the inference or presumption that they were intended to restrain trade and enhance prices. Under either branch of the test, the inquiry is confined to a consideration of impact on competitive conditions.
>
> * * *
>
> There are, thus, two complementary categories of antitrust analysis. In the first category are agreements whose nature and necessary effect are so plainly anticompetitive that no elaborate study of the industry is needed to establish their illegality—they are "illegal *per se*." In the second category are agreements whose competitive effect can only be evaluated by analyzing the facts peculiar to the business, the history of the restraint, and the reasons why it was imposed. *In either event, the purpose of the analysis is to form a judgment about the competitive significance of the restraint; it is not to decide whether a policy favoring competition is in the public interest, or in the interest of the members of an industry.* Subject to exceptions defined by statute, that policy decision has been made by the Congress.

Id. at 690-92, 98 S.Ct. at 1364-65 (footnotes omitted, emphasis added).

In the *Maricopa County* case, the Court held a maximum-fee agreement among doctors to be illegal per se under Section 1 of the Sherman Act. In so holding, the Court rejected the defendants' arguments that the rule of per se illegality should not be applied because: (1) the restraint involved doctors rather than nonprofessionals, (2)

the judiciary had little experience in the health care industry, and (3) the restraint was alleged to have procompetitive effects. In response to the third argument, the Court said:

> The argument indicates a misunderstanding of the *per se* concept. The anticompetitive potential inherent in all price fixing agreements justifies their facial invalidation even if procompetitive justifications are offered for some. Those claims of enhanced competition are so unlikely to prove significant in any particular case that we adhere to the rule of law that is justified in its general application. Even when the respondents are given every benefit of the doubt, the limited record in this case is not inconsistent with the presumption that the respondents' agreements will not significantly enhance competition.

__ U.S. at __, 102 S.Ct. at 2477.

These principles are controlling in this case as well. The petitioners in this case *do not even contend* that the exclusive anesthesiology contract promoted competition.[2] Rather, the petitioners have contended only that the exclusive contract resulted in certain "benefits" that allowed the Hospital's department of anesthesiology to run more efficiently. The court of appeals summarized the petitioners' contentions concerning these "benefits" as follows:

> Appellees aver that the system employed is in the best interest of quality patient care. The monitoring of specialized equipment and supervision of

[2] Nor do the petitioners seriously dispute that the exclusive contract results in the substantial restraints on competition described by the court of appeals. 686 F.2d at 291-92.

> nurses can best be handled, in their estimation, by the closed group policy. This closed group policy also gives the hospital the continuous twenty-four hour a day coverage that is crucial in the event of an emergency. Other arguments made to justify the policy are that it facilitates the use of operating rooms since no waiting for outside anesthesiologists is necessary and that it wisely allows the responsibility for development and management of the department to be placed upon one individual with legal obligations to the hospital. Finally, the appellees assert that the closed group policy permits them to more closely monitor the professional standards employed by the department members.

686 F.2d at 288 (footnote omitted).

All of these "benefits" might well be desirable;[3] *but they cannot justify a restraint on competition.* Even under the more lenient Rule of Reason, the petitioners could justify their restraint on competition only by showing that the exclusive contract somehow *promoted competition;* yet they have not even alleged that to be the case. Therefore, the exclusive contract in this case could not be upheld even under the Rule of Reason. Under the rule of per se illegality, which *presumes* that the anticompetitive effects outweigh any procompetitive justification, the result must be the same.

The decision of the court of appeals in this case is consistent with and supported by the applicable decisions of this Court. It makes no difference which test is applied. This exclusive anesthesiology contract is illegal because it

[3] In fact, the court of appeals found all of these "benefits" to be illusory in that the evidence demonstrated they could be achieved in the absence of an exclusive contract. 686 F.2d at 288 n. 2, 298.

restrains competition without legal justification. Therefore, the Court need not grant review on certiorari in this case.

B. The Traditional Reasons For Granting Review On Certiorari Are Not Present In This Case.

Rule 17 of this Court indicates the character of the reasons that the Court will consider in determining whether to grant review on certiorari. None of the reasons described in Rule 17 are present in this case.

First, there is no conflict among the circuits with respect to the issue decided by the court of appeals. Although the petitioners cite in their petition several cases decided by other circuits and imply that a conflict exists, none of these other circuit court decisions in fact even considered whether an exclusive anesthesiology contract might constitute a per se illegal tying arrangement. For example, *Capili v. Shott*, 620 F.2d 438 (4th Cir. 1980) and *Harron v. United Hospital Center, Inc.*, 522 F.2d 1133 (4th Cir. 1975), cert. denied, 424 U.S. 916, 96 S.Ct. 1116 (1976), were decided on jurisdictional grounds, not on the merits. *Dos Santos v. Columbus-Cuneo-Cabrini Medical Center*, 684 F.2d 1346 (7th Cir. 1982), merely reversed the granting of a preliminary injunction on the ground that irreparable harm was not shown. In *Robinson v. Magovern*, 521 F.Supp. 842 (W.D.Pa. 1981), *aff'd mem.*, 688 F.2d 824 (3rd Cir. 1982) (the only decision on the merits cited by the petitioners), there was no claim made that an exclusive anesthesiology contract constituted a per se illegal tying arrangement. There simply is no conflict among the circuits with respect to the issue of this case.

Second, this is not a case in which the court of ap-

peals "has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court." The decision of the court of appeals is entirely consistent with the applicable decision of this Court. Furthermore, as the petitioners conceded in the lower courts,[4] the result in this case, whatever it may be, is dependent on the facts peculiar to this case. Contrary to the petitioners' current argument, this case will not, indeed cannot, govern all exclusive contracts in all specialties at all hospitals. The court of appeals merely held that, under the facts of this case, the exclusive anesthesiology contract between the Hospital and Roux & Associates constitutes an illegal tying arrangement. Other exclusive contracts employed under other circumstances must be judged on their own facts.

Under the general standards of Rule 17, this case is not worthy of review on certiorari. Therefore the petition should be denied.

C. The Petitioners Have Not Raised Any Arguments That Would Justify Review On Certiorari.

In addition to the unsupported contention that the decision of the court of appeals "sweeps aside" all exclusive contracts, the petitioners raise two other arguments. First, they claim that the exclusive contract does not create a tying arrangement at all. Second, they argue that, in any event, the tying arrangement cannot be

[4] For example, in their Memorandum in Support of Motion to Dismiss Appeal filed in the court of appeals, the petitioners stated: "This case was tried on its own particular facts and any holding herein should, in all probability, have application only with respect to this plaintiff and this defendant."

unlawful without a showing that it resulted in increased prices. Neither of these contentions has merit.

Perhaps the only point on which the district court and the court of appeals agreed was that the exclusive anesthesiology contract did create a tying arrangement. Based upon the petitioners' own evidence, the district court found that the provision of surgical facilities and the provision of anesthesiology services are separate "products" tied to each other. The district court stated:

> The provision of anesthesia services is a medical service separate from the other services provided by the hospital. The hospital charges the patient a separate charge for this service.

513 F.Supp. at 540.

The petitioners did not even challenge this finding in the court of appeals. Now, for the first time, they contend that the provision of anesthesiology services merely is one part of the overall "package" of services furnished by the Hospital. Petition at 13. The fallacy of this contention is that it ignores the distinction between the Hospital and the physicians who practice in it. Under Louisiana law, a hospital legally cannot engage in the practice of medicine (including the specialty of anesthesiology). Only the physicians who practice within the hospital are licensed to practice medicine. Therefore, it is the members of Roux & Associates, not the Hospital, who render anesthesiology services to patients; and the rendering of professional anesthesiology services cannot be characterized as merely a part of "hospital care."

If the provisions of anesthesiology services could be

so characterized, the Hospital would be guilty of violating at least two provisions of Louisiana law. In his complaint, Dr. Hyde alleged that the exclusive contract also was illegal under Louisiana law because it called (1) for "fee splitting" in violation of La. R.S. 37:1284, and (2) for the exercise of professional medical discretion by the Hospital in referring patients to Roux & Associates in violation of La. R.S. 37:1270. In other words, Dr. Hyde alleged what the petitioners' argue now, *i.e.*, that the Hospital actually was practicing medicine by providing professional anesthesiology services to patients. The district court, however, disagreed. It stated:

> The Court also finds that the portion of the anesthesia fees retained by the hospital bears a reasonable relationship to *the services and materials provided by the hospital in connection with the anesthesiology services.*
>
> The Court finds that the hospital did not improperly engage in the diagnosis and treatment of patients. *The evidence shows that the anesthesia services are provided by the anesthesiologist* who prescribes the drugs used and performs all procedures requiring expertise. The CRNA's work under the supervision of the anesthesiologists and their function is to monitor the patients while they are anesthetized.

513 F.Supp. at 539-40 (emphasis supplied).

Thus, the district court found that the provision of anesthesiology services is *not* merely a part of the overall "package" of hospital services. Rather, it is a professional service rendered by licensed anesthesiologists who are legally responsible for the anesthesiology care received by the patient. As the district court noted, the Hospital fur-

nishes only materials and the non-professional services of nurse anesthetists "in connection with" the work of the anesthesiologists. Both the district court and the court of appeals found that the provision by the Hospital of surgical facilities and the provision by Roux & Associates of anesthesiology services are separate and distinct products that are tied together by the exclusive anesthesiology contract. The petitioners' argument to the contrary lacks any evidentiary or legal basis.

The petitioners' contention that their tying arrangement with Roux & Associates cannot be held unlawful without a showing that it has resulted in a price increase also is without basis. In *Arizona v. Maricopa County Medical Society, supra*, this Court rejected a similar argument in support of an agreement to fix maximum prices. The Court said:

> In this case the rule is violated by a price restraint that tends to provide the same economic rewards to all practitioners regardless of their skill, their experience, their training, or their willingness to employ innovative and difficult procedures in individual cases. Such a restraint also may discourage entry into the market, and may deter experimentation and new developments by individual entrepreneurs. It may be a masquerade for an agreement to fix uniform prices, or it may in the future take on that character.

__ U.S. at __, 102 S.Ct. at 2475.

The anticompetition effects of the Hospital's exclusive anesthesiology contract are similar to those described by the Court in the *Maricopa County* case. The contract raises entry barriers and stifles innovation. The

court of appeals described the anticompetitive effects of the exclusive anesthesiology contract as follows:

> The exclusive contract spawns a number of anticompetitive effects. First, the tie prevents anesthesiologists from entering that part of the anesthesia services market which the hospital controls. This prohibition of competition not only serves indirectly to artificially limit the number of anesthesiologists in the area, but, more importantly, it reduces the incentive for improving or initiating techniques or procedures. Quality is lowered by this restraint while at the same time the hospital's profit, as demonstrated above, is raised. In the instant case, there was also testimony that the profit motive caused the hospital to hire more anesthetists in place of needed anesthesiologists, a practice which dilutes the professional coverage available. Secondly, the tie eliminates the surgeon's or patient's choice of anesthesiologist at the hospital. Since one goal of antitrust law is to allow the consumer to make buying decisions without being subject to economic coercion, this anticompetitive effect is significant in a market where location tends to govern the choice of hospital.

686 F.2d at 291-92 (footnotes omitted).

Based on the undisputed evidence, the court of appeals could only conclude that the tying arrangement between the Hospital and Roux & Associates substantially restrains competition among anesthesiologists. The fact that no direct price increase was shown does not save the contract from Sherman Act illegality.

CONCLUSION

The decision of the court of appeals is consistent with and supported by prior decisions of this Court. There are no compelling reasons for the Court to grant review on certiorari. Accordingly, the petition should be denied.

Respectfully submitted,

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CERTIFICATE

I certify that three copies of the foregoing brief have been mailed, postage prepaid, to counsel for the petitioners, Frank H. Easterbrook, 1111 East 60th Street, Chicago, Illinois 60637, Lucas J. Giordano, 810 Union Street, New Orleans, Louisiana 70112, and Thomas J. Reed and Henry S. Allen, Jr., 134 South LaSalle Street, Chicago, Illinois 60603, this _____ day of February, 1983.

_____

John M. Landis